di-Pertuan Agong under article 150 of the Constitution:

And whereas Parliament by reason of the emergency considers it necessary for securing public safety, the defence of the Federation, the maintenance of public order and of supplies and services essential to the life of the community, that powers be conferred on the Yang di-Pertuan Agong to make such regulations as appear to him to be necessary:

And whereas it is hereby declared that this Act appears to Parliament to be required by reason of the emergency:"

Section 2 of the Act reads as follows:—

"2. (1) Subject to the provisions of this section, the Yang di-Pertuan Agong may make any regulations whatsoever (in this Act referred to as 'Essential Regulations') which he considers desirable or expedient for securing the public safety, the defence of the Federation, the maintenance of public order and of supplies and services essential to the life of the community.

(2) Without prejudice to the generality of the powers conferred by the preceding sub-section, Essential Regulations may, so far as appear to the Yang di-Pertuan Agong to be necessary or expedient for any of the purposes mentioned in that sub-section —

.. .. ..

(d) make special provisions in respect of procedure (including the hearing of proceedings in camera) in civil or criminal cases and of the law regulating evidence, proof and civil and criminal liability:"

The Emergency (Criminal Trials) Regulations, 1964, to which objection is now taken, are made by the Yang di-Pertuan Agong in exercise of the powers conferred by the above recited section 2. Objection is taken not to the exercise of the powers but, as stated before, to the exercise of the powers so as in effect to confer a power to discriminate between persons.

We do not agree with the contention. We do not consider that the regulations confer any arbitrary power on the public prosecutor. On the other hand, we are of the opinion, on the reasoning of the *Saurashtra's* case, *supra*, that there is in the Act itself and in the regulations a nexus between the criminal trial or classification of criminal trials to be tried under the special procedure provided in the regulations and the object of the Ordinance. Regulations 4 and 5 are, in our opinion, not *ultra vires* section 2(2)(d) of the Emergency (Essential Powers) Act, 1964.

As for the dreadful prospect envisaged by counsel for the appellant that two men charged with the same offence can be tried by two different modes of trial, depending on the whim and fancy of the public prosecutor or, as it is said, "with an evil eye and an unequal hand," the answer lies in the following passage from the judgment of Das J. in the *Saurashtra's* case, *supra*, at page 137:—

"In my judgment, this part of the section, properly construed and understood, does not confer an uncontrolled and unguided power on the State Government. On the contrary, this power is controlled by the necessity for making a proper classification which is to be guided by the preamble in the sense that the classification must have a rational relation to the object of the Act as recited in the preamble. It is, therefore, not an arbitrary power. . . . If at any time, however, the State Government classifies offences arbitrarily and not on any reasonable basis having a relation to the object of the Act, its action will be either an abuse of powers if it is purposeful or in excess of its powers even if it is done in good faith and in either case the resulting discrimination will encounter the challenge of the Constitution and the court will strike down not the law which is good but the abuse of misuse or the unconstitutional administration of the law creating or resulting in unconstitutional discrimination."

The appeal is dismissed, and the conviction and sentence confirmed.

Appeal dismissed.

Solicitors: *S. Seenivasagam & Sons.*

SHRIRO (CHINA) LTD. & ORS. v. THAI AIRWAYS INTERNATIONAL LTD.

[O.C.J. (Ambrose J.) September 24, 1966]

[Singapore — Suit No. 1097 of 1963]

Carriage of goods by air — Successive carriers — Liability of carrier although not named in air waybill — Loss by theft — No proof that defendants had not taken reasonable care to avoid loss — Negligence — Warsaw Convention Relating to International Carriage by Air, 1929, arts. 20 and 30.

The plaintiffs claimed damages against the defendants for the loss of eight cases of watches which were delivered to Air France for carriage by air from Basle-Mulhouse to Singapore. The air waybill provided that the goods were to be carried by Air France from Basle-Mulhouse to Bangkok and by Japan Air Lines from Bangkok to Singapore. Air France substituted the defendants for the Japan Air Lines for the carriage of the goods from Bangkok to Singapore. The goods were stolen while in the defendants' possession at the Singapore Airport. It was argued (1) that article 30 of the Warsaw Convention applied to the defendants although they were not mentioned in the air waybill and that they were liable as the carrier who performed the carriage during which the loss took place; (2) that the defendants could not avail themselves of article 20(1) of the Hague Convention as the air consignment notice did not contain all the particulars required in article 8(1) of the Convention; (3) that the defendants had not taken all necessary measures to avoid the loss of the goods by theft.

Held: (1) the Warsaw Convention does not require the names and addresses of subsequent carriers by whom carriages are to be performed and to whom article 30 would apply to be entered on the air waybill and the defendants would be liable as the carrier who performed the carriage during which the loss took place;

(2) the consignment note in this case stated the weight of the articles and as the provision of article 8(1) of the Warsaw Convention was ambiguous, the consignors must be deemed to have complied with the article as they had stated one of the particulars required in the article;

(3) on the facts the defendants had taken reasonable care to avoid the loss of the goods by theft and therefore they were entitled to avail themselves of article 20(1) of the Convention.

In this case the plaintiffs had not proved that the defendants did not take reasonable care to avoid the loss

of the goods by theft and therefore could not succeed in their claim in tort for negligence.

Cases referred to:—

(1) *The Borneo Company Ltd.* v. *Braathens South American Transport and F.E. Air Transport A.S.* [1960] M.L.J. 201.

(2) *Chisholm* v. *British European Airways* [1963] 1 Lloyds Rep. 626.

CIVIL SUIT.

M. Karthigesu for the plaintiffs.

J. Grimberg for the defendants.

Ambrose J.: This was an action for damages in respect of the loss of eight cases containing watches, which were delivered to Air France on the 7th September, 1962, by Sacom Pour Le Commerce D'Outre-Mer of Switzerland for carriage by air from Basle-Mulhouse to Singapore. The air waybill, which was the air consignment note, provided that the goods were to be carried by Air France from Basle-Mulhouse to Bangkok and by Japan Air Lines from Bangkok to Singapore.

The following facts were agreed between the parties at the trial. The gross weight of the goods was 80.5 kilograms. The value of the watches was $53,142.97. The defendants, Thai Airways International Ltd., carried the watches from Bangkok to Singapore. The watches were stolen while in the defendants' possession at the Singapore Airport. The second plaintiffs were the consignee. The first plaintiffs claimed to have purchased the watches from the Swiss consignors. Either the second or the first plaintiffs were entitled to delivery. The defendants did not deliver the goods to either of them.

It was further agreed between the parties at the trial that the carriage was an international carriage within the meaning of the Convention relating to International Carriage by Air which was signed in Warsaw on the 12th October, 1929; that the carriage was to be performed by successive carriers; and that the position of the parties was to be determined by the terms of the original Warsaw Convention without regard to the amendments contained in the Protocol adopted by the international conference held at The Hague in 1955.

It was not disputed that the defendants were not parties to the contract of carriage set out in the air consignment note. But it was submitted by counsel for the plaintiffs that, because the defendants accepted the goods in question, they were subjected by article 30(1) of the Warsaw Convention to the rules set out in the Convention, and were to be deemed to be one of the contracting parties to the contract of carriage in so far as the contract dealt with that part of the carriage which was performed under their supervision. Article 30(1) says:—

> "In the case of carriage to be performed by various successive carriers and falling within the definition set out in the third paragraph of article 1, each carrier who accepts passengers, luggage or goods is subjected to the rules set out in this Convention, and is deemed to be one of the contracting parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under his supervision."

It should be stated here that it was not disputed that the carriage in question fell within the definition set out in article 1(3). This provision reads:—

> "A carriage to be performed by several successive air carriers is deemed, for the purpose of this Convention, to be one undivided carriage, if it has been regarded by the parties as a single operation,"

Counsel for the defendants submitted that the words "named in the air consignment note" should be read into article 30(1) immediately after the words "various successive carriers." The reason for this submission was that article 30(1) provides that each carrier who accepts passengers, luggage or goods is deemed to be one of the contracting parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under his supervision. I am unable to accept the submission. It has to be borne in mind that article 8 of the Warsaw Convention only requires the name and address of the first carrier to be stated in the air waybill; and that apparently the names and addresses of the subsequent carriers by whom the carriage is to be performed and to whom article 30 would apply do not have to be stated in it. I am, therefore, unable to accept counsel's further contention that, as the defendants were not mentioned in the air waybill, article 30 could not be invoked against them.

It was also submitted by counsel for the plaintiffs that under article 30(3) the consignee entitled to delivery had a right of action against the last carrier, namely, the defendants; and that the consignee entitled to delivery could take action against the defendants as the carrier who performed the carriage during which the loss took place. Article 30(3) says:

> "As regards luggage or goods, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier who performed the carriage during which the destruction, loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee."

I accept the submissions made by counsel for the plaintiffs based on article 30(1) and (3). In my view, where the carriage to be performed by several successive carriers has been regarded by the parties to the contract as a single operation under article 1(3), the expression "each carrier" in article 30(1) means each carrier who accepts passenger, luggage or goods, and actually performs part of the carriage in question, whether

named in the air consignment note or not. According to condition 1 of the conditions of contract printed on the back of the air waybill, "carrier" includes the "air carrier issuing this air waybill and all air carriers that carry the goods hereunder or perform any other services related to such air carriage." This definition of "carrier" strongly supports the view that the defendants were to be considered a carrier although not mentioned in the air consignment note. Under condition 5 of the conditions of contract, the carrier may without notice substitute alternate carriers or aircraft. Under this condition, Air France substituted the defendants for Japan Air Lines as regards the air carriage of the goods from Bangkok to Singapore. It seems to me that the defendants carried the goods by air under the original air waybill; and that, if they did not do so, they did perform a service related to carriage under the original air waybill. In my opinion, they were, therefore, a carrier as defined in condition 1. In my view, a carrier's contractual right to substitute another carrier implies, in the absence of indications to the contrary, that the intention of the parties is that the substituted carrier is to be in the same position as the carrier or carriers mentioned in the contract of carriage.

To exclude liability the defendants sought to avail themselves of article 20(1). They were not entitled to do so, if the air consignment note did not contain all the particulars set out in article 8(a) to (i) inclusive and (q). This is provided by article 9, which reads:—

> "If the carrier accepts goods without an air 'consignment note having been made out, or if the air consignment note does not contain all the particulars set out in article 8(a) to (i) inclusive and (q), the carrier shall not be entitled to avail himself of the provisions of this Convention which exclude or limit his liability."

The second issue was whether the air consignment note contained what was required by article 8(i). Counsel for the plaintiffs contended that article 8(i) required the air consignment note to contain the weight, the quantity and the volume or dimensions of the goods; that only the weight of the goods was stated in the air consignment note; that the air consignment note did not contain all the required particulars; and that therefore the defendants were not entitled to avail themselves of article 20(1). Counsel cited *The Borneo Co. Ltd.* v. *Braathens South American Transport & F.E. Air Transport A.S.*[1] There it was held that, because the air consignment note did not state either the volume or the dimensions of the goods, it did not contain all the particulars required by article 8(i).

Counsel for the defendants raised a point which did not appear to have been raised in the case cited by counsel for the plaintiffs. He contended that the French text of the Convention was the authoritative one. Article 36 of the Convention reads:—

> "The Convention is drawn up in French in a single copy which shall remain deposited in the archives of the Ministry for Foreign Affairs of Poland and of which one duly certified copy shall be sent by the Polish Government of each of the High Contracting Parties."

I accepted this contention. The French text of article 8 is to be found in *Shawcross & Beaumont* on Air Law, 2nd edition, at pages 566 and 567. It was not disputed that a literal translation of the French text of article 8(i) is as follows:—

> "The air consignment note shall contain the following particulars:—
>
> (i) the weight, the quantity, the volume or the dimensions of the goods."

Counsel for the defendants went on to contend that the French text was ambiguous. I accepted this contention. In my view, the French text is not clear as to whether the air consignment note should contain only one of the four particulars or whether it should contain the first two particulars and either the third or the fourth. The text of the English translation of the Warsaw Convention in the First Schedule to the Carriage by Air Act, 1932, has removed the ambiguity by inserting the word "and" immediately after the word "quantity". Without the insertion of the word "and" the text is clearly ambiguous. As the consignors had complied with one of the two possible interpretations of the authoritative text of article 8(i), I took the view that they had complied with article 8(i).

Before I proceed to the third issue, I must mention here that it appears that both the United States of America Government translation and th German Government translation of the Warsaw Convention provide that it is sufficient to fill in only one of the four particulars mentioned in article 8(i): see "Limitation of Liabilities in International Air Law" by H. Drion, page 311, paragraph 269, note 3. If what is stated by *Drion* is correct, it supports my view that the French text of article 8(i) is ambiguous.

As I have said earlier, the defendants sought to exclude liability by availing themselves of article 20(1). This provides as follows:—

> "The carrier is not liable if he proves that he and his agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures."

This provision places upon the carrier the burden of proving that he has exercised all reasonable care in relation to the goods: *Chisholm* v. *British European Airways.*[2] The third issue was whether the defendants took all reasonable care to avoid the loss of the goods by theft.

The evidence given by Chua Jee Bah, the

defendants' cargo clerk, and Peter Choo Chwee Tenh, one of the defendants' cargo supervisors, was to this effect. The defendants' aircraft arrived in Singapore from Bangkok on the 11th November, 1962, about 10 p.m. The eight cases containing watches were unloaded from the aircraft and placed in the defendants' store at the airport under the supervision of Chua and Stanley Ezekiel, who was one of the defendants' cargo supervisors. The store was allocated to the defendants by the Department of Civil Aviation. It was in a building used by that department with a partition made of strong wire mesh separating the store from the portion used by the department. The doors of the store were fastened by a hasp and staple and locked, and the key was kept by Ezekiel. The outer doors of the building in which the store was situated were then locked, and the key was returned by Ezekiel about 11.30 p.m. to the apron control. Choo and Ezekiel went home in the defendants' van. It was the van driver's duty to return to the airport, collect the key to the building from the apron control and put the van in the portion of the building used by the Department of Civil Aviation. He would then lock the outer doors of the building and leave the key with the apron control. The next morning he would collect the key from the apron control, open the outer doors of the building, and take out the van to collect the staff. He would lock the outer doors and leave the key with the apron control. Chua and Ezekiel returned to the airport in the van about 6.30 a.m. The hasp and staple fastening the doors of the store were found to have been prised open. The eight cases were missing. There was a square hole cut in the ceiling in the portion of the building which was occupied by the department of civil aviation. The ceiling was made of strong wire mesh. Access to the store could have been obtained from the premises of other air lines in the same building or from outside the building. The building accommodated the stores of Pan American Airways, Japan Air Lines, Air India and Qantas. No strong room was made available by the department of civil aviation for the various air lines who had stores in the building. The airport police provided security and patrolled the area. There had been no previous theft from any of the stores in the building. There was no reason to suppose that the store was in any way unsafe. The airport police were informed of the theft but no part of the missing cargo was recovered.

According to Peter Choo and Chua Jee Bah, if the Swiss consignors had made a special declaration of the value of the cargo, advance information would have been sent to the defendants as regards the declared value, the consignees would have been required by the defendants to take delivery of the cargo upon the arrival of the aircraft, and the cargo would not have been left in the store: no such special declaraion had been made and the cargo was therefore treated as general cargo. Article 22(2) of the Warsaw Convention limits the liability of the carrier to 250 francs per kilogram where the consignor has not made a special declaration of the value at delivery. It was not disputed that, if the defendants were found to be liable, their liability was limited by article 22(2) to $4,071.11, provided the air consignment note contained all the required particulars.

It was submitted by counsel for the plaintiffs that the eight cases of watches could have been kept in the defendants' town office. There was no evidence, however, that the defendants' town office would have been more secure than the defendants' store at the airport. On the evidence before me I came to the conclusion that the defendants took reasonable care to avoid the loss of the goods by theft.

There was a claim in tort for damages for the defendants' negligence in respect of the loss of the eight cases. This claim failed as the plaintiffs did not prove that the defendants did not take reasonable care to avoid the loss of the goods by theft.

For the above reasons I gave judgment for the defendants with costs.

Judgment for the defendants.

Solicitors: *Allen & Gledhill; Drew & Napier.*

LOH PECK HOO v. YIP LIM

[O.C.J. (Choor Singh J.) September 27, 1966]

[Singapore — Suit No. 337 of 1965]

Landlord and Tenant — Allegation that tenant has been "guilty of using or permitting the use of the premises for illegal or immoral purposes" — Proof — Control of Rent Ordinance, (Cap. 242), s. 15(1)(d).

The plaintiff claimed possession of certain premises on the allegation that the defendant, the tenant, had been guilty of using or permitting the use of the premises for illegal or immoral purposes. It was alleged that the premises in question had been used as a brothel and three police officers were called to testify that they saw persons going in and out of the premises.

Held: in order to succeed under section 15(1)(d) of the Control of Rent Ordinance it must be proved that the tenant has been guilty beyond reasonable doubt of using or permitting the use of the premises for illegal or immoral purposes and in this case the plaintiff had failed to do so.

CIVIL SUIT.

N. A. Christopher for the plaintiff.

R. E. Redrup for the defendant.